

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**OFFICE OF CONSERVATION AND COASTAL LANDS**  
Honolulu, Hawaii

REF:OCCL:DH

CDUA MA-3245

Acceptance Date: August 18, 2005  
180 Day Exp. Date: February 14, 2006

**Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii**

**REGARDING:** Conservation District Use Application (CDUA) MA-3245  
Berliner Single Family Residence (SFR)

**APPLICANT:** Gerald Park, 1221 Kapiolani Boulevard, Suite 211, Honolulu,  
Hawaii 96814

**LANDOWNER:** Heather and Michael Berliner, 202 Wahioli, Lahaina, Hawaii  
96761

**LOCATION:** Hana District, Island of Maui

**TMK:** (2) 1-3-009:002

**AREA OF PARCEL/  
USE:** 2.93 Acres  
Approximately 2,796 square feet

**SUBZONE:** General

**ENFORCEMENT CASE MA-05-66:**

On Friday, July 8, 2005, the Board of Land and Natural Resources (Board) found the Berliner's to be in violation of Title 13-5 Hawaii Administrative Rules (HAR), and Chapter 183C, Hawaii Revised Statutes (HRS) by failing to obtain the appropriate approval for a landscaping action. The Berliners were fined \$2,500.00, and needed to apply for an After The Fact (ATF) CDUA for the landscaping action. The Berliners have applied for the CDUA for landscaping, and have also submitted the proposed SFR project.

**DESCRIPTION OF AREA/CURRENT USE:**

The proposed project encompasses a 2.93 acre subject parcel TMK: (2) 1-3-9:002, which is located approximately  $\frac{3}{4}$  miles mauka of the Hana Airport. The subject parcel is located in the State Land Use (SLU) Conservation District, General subzone. Private and public landowners bound the subject parcel to the north, south, and east, and Alalele Place to the west. Access to the subject parcel is by Alalele Place, which joins to Hana Highway (**Exhibits 1, 2 & 3**).

**PROPOSED PROJECT:**

The Berliner's are proposing to construct a SFR in the District of Hana, Island of Maui, pursuant to Section 13-5-24, HAR, R-8, SINGLE FAMILY RESIDENCE, D-1, "A Single Family Residence that conforms to design standards as outlined in this chapter."

The proposed 3 bedroom, 2 bath, 2,224 square foot SFR (includes a kitchen, dining area, living area, and 2 covered lanai) will be erected on a post and pier foundation with a 4-foot crawlspace; the finished height of the SFR is 21 feet 8 inches. It will be finished with wood siding in natural and earth tone colors to blend with the surrounding environment; the roof will be gabled.

A detached 572 square foot (finished height 15 foot high) carport is also proposed. A grass footpath connects the carport with the rear of the SFR. Water catchment will collect non-potable water for household use; roof runoff will be collected in a 5,000 gallon steel reservoir. An individual wastewater treatment system will collect wastewater; solids will be collected in a septic tank and effluent discharged in leach fields. Electric, water, and communication services (telephone, cable) will be extended to the SFR from Alalele Place (**Exhibit 4**).

As noted, the subject parcel was previously landscaped; a 1.7-acre area was grubbed, and landscaped with grass, multiple coconut palms, bird of paradise, croton, 'ti, heliconia, and guava. The balance of a 1.2-acre area consists of tall grass, papaya, and trees. However, no known endangered or threatened flora or fauna were encountered or documented at the proposed site. No known traditional and customary native Hawaii rights are exercised at the project site. No historical or archaeological sites have been identified upon the project site. Specified mitigation measures discussed within the Final Environmental Assessment (FEA) will mediate short and long term environmental impacts, and potential hazards during construction

**AGENCY COMMENTS:**

The subject CDUA was referred for review and comment to the DLNR - Historic Preservation Division, Maui District Land Office, Maui County Planning Department, Office of Hawaiian Affairs, Department of Health, Office of Environmental Quality Control, Department of Transportation Airport Division, and Hana Public and School Library.

Office of Environmental Quality Control

OEQC notes to consider using native Hawaiian plants for landscaping.

*Applicant Response: Existing trees and palms will remain and there is no current plan to introduce Native Hawaiian plants into the landscape, however if plants are planned the Berliners will submit a plan to the DLNR for approval.*

Office of Hawaiian Affairs

OHA notes if the comment noting that the property is “devoid of archaeological and cultural resources was made by an individual with a background in Hawaiian Archaeology, or from a formal Archaeological Inventory Survey. OHA notes subsurface deposition cannot be determined by visual inspection of the present ground surface

Human burials, historic properties, and cultural sites have been encountered in areas that have undergone substantial grading and ground altering activities. OHA recommends an Archaeological Monitor Plan be drafted in support for the proposed project; and will address both on site and on call monitoring by a professional archeologist. Future landscaping should include Native Hawaiian flora to promote the native ecosystems in the Kaeleku area. Should iwi kupuna or Native Hawaiian cultural or traditional deposits be found during ground disturbance, work will cease and the appropriate agencies will be contacted pursuant to applicable law.

*Applicant Response: The conclusion should read in its entirety, “the landscaped area where the improvements are proposed is devoid of archeological and cultural resources,” and was based on: 1) absence of surface archeological features in the landscaped area; 2) no record of archeological features on the premises per the Historic Preservation Division; and 3) recollections of Hana residents (which noted the area on both sides of the airport was once in sugarcane production. It is agreed that subsurface deposits cannot be determined by visual inspection of the ground surface, however this was addressed the short-term impacts discussion. Work will stop if subsurface archeological or cultural features are unearthed the HOD will be notified, and if burials were found the HPD and Maui Police Department would be notified.*

Maui County Department of Planning

Maui County Department of Planning notes the proposed project is located in the Special Management Area (SMA). A SMA Assessment should be submitted to determine if a SMA permit is required and/or is an exempted action.

*Applicant Response: A Special Management Area Assessment application has being submitted for review.*

Department of Health

No Comment.

Maui District Land Office

No Comment.

**ANALYSIS:**

Following review and acceptance for processing, the applicant was notified, by letter dated August 18, 2005 that:

1. The proposed use is an identified land use in the Conservation District, according to Section 13-5-24, Hawaii Administrative Rules (HAR), R-8, SINGLE FAMILY RESIDENCE, D-1, "a single family residence that conforms to design standards as outlined in this chapter;" please be advised, however, that this finding does not constitute approval of the proposal;
2. Pursuant to Section 13-5-40, HAR, a public hearing will not be required; and
3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and HAR, Title 11, Department of Health, Chapter 200, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be submitted to OEQC to be published in the September 8, 2005 Environmental Notice.

The Final Environmental Assessment (FEA) was submitted with a Finding of No Significant Impact (FONSI) for OEQC's November 8, 2005 Environmental Notice.

**13-5-30 CRITERIA:**

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on a vacant parcel, however the action is consistent with the purpose of the Conservation District. The area's natural resources will be preserved and potential impacts will be minimized, with mitigation measures.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the General subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature.

Staff is of the opinion that the proposed land use is of a rural nature and it is designed and sited properly with mitigation measures; thus open space resources would be preserved.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled "Coastal Zone Management", where applicable.*

The project is not located within the County's Special Management Area. It does comply with the provisions identified in Chapter 205A, HRS in the following areas: Managing Development, and Scenic and Open Space Resources.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. The site is presently landscaped and is located in a rural setting. Development of the site will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed structure can fit into the locality and surrounding areas, with appropriate mitigation measures and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

The applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The proposed project is intended to blend in visually with the surrounding area, and open space will be preserved.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare. Staff concurs with the applicant.

**DISCUSSION:**

The proposed use is an identified land use within the Resource Subzone of the Conservation District, according to HAR, Section 13-5-24, R-8, SINGLE FAMILY RESIDENCE, D-1, "a single family residence that conforms to design standards as outlined in this chapter."

The applicant proposes to construct 2,224 square foot SFR, and 572 square foot carport; total area 2,796 square feet, which is less than the 5,000 square foot SFR that could normally be applied for under HAR, Section 13-5-24. The applicant will mitigate impacts to the natural beauty and open space characteristics of the subject parcel around the SFR and carport with appropriate building design, color, and landscaping. Staff is of the opinion that the proposed SFR and carport will not result in substantial adverse impacts to natural resources.

Staff is of the opinion that the proposed project does not conflict with the objectives of the subzone. The proposed project will be built in a rural area of Hana, where many subdivisions have occurred. There are multiple residences in the vicinity due to the proximity to Hana Town. Staff is of the opinion that the applicant has addressed potential problems with adequate mitigation measures. Staff is of the opinion that there is no conflict with public health, safety or welfare by conducting the proposed project.

Staff comments that there is significant potential for fugitive dust to be generated during the removal of debris, during the construction activities, and may impact nearby residents. It is recommended that a dust control management plan be developed which identifies and addresses those activities that have a potential to generate fugitive dust. In addition, construction activities must comply with provisions of HAR, Section 11-60.1-33 on Fugitive Dust.

Staff notes the contractor should provide adequate means to control dust from road areas and during the various phases of construction activities, including by not limited to: 1) planning the different phases of construction, focusing on minimizing the amount of dust-generating materials and activities, centralizing material transfer points and on-site vehicular traffic routes, and locating potentially dusty equipment in areas of the least impact; 2) providing an adequate water source at the site prior to start-up of construction activities; 3) landscaping and rapid covering of bare areas, including slopes, starting from the initial grading phase; 4) controlling of dust from shoulders, project entrances, and access roads; 5) and providing adequate dust control measures during weekends, after hours, and prior to daily start-up of construction activities.

Therefore, staff recommends the following:

**RECOMMENDATION:**

That the Board of Land and Natural Resources APPROVE CDUA MA-3245 for the Berliner's request to construct a SFR in the Hana District, Island of Maui, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of Section 13-5-42, HAR;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawaii Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction must be completed within three years of the approval;
6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
7. All mitigation measures set forth in the application materials, in the Final Environmental Assessment, for this project are hereby incorporated as conditions of the permit;
8. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
9. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
10. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

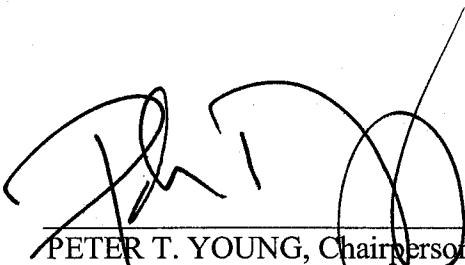
11. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
12. The Single Family Dwelling shall not be used for rental or any other commercial purposed unless approved by the board;
13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
14. Other terms and conditions as may be prescribed by the Chairperson; and
15. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,



Dawn T. Hegger  
Staff Planner

By:

  
\_\_\_\_\_  
PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources



3

5  
4  
3

S E A

MANA FOREST RESERVE (See insert)

The map shows the Hanalei Forest Reserve, which is divided into three sections: SECTION 2, SECTION 5, and SECTION 6. SECTION 2 is located in the upper left, SECTION 5 in the upper right, and SECTION 6 in the lower right. The Kīpahulu Forest Reserve is located in the lower left. The map includes a scale bar (1 inch = 1 mile) and a north arrow. Various geographical features are labeled, including Waialeale, Waialeale, and Waialeale. The map is oriented with North at the top.

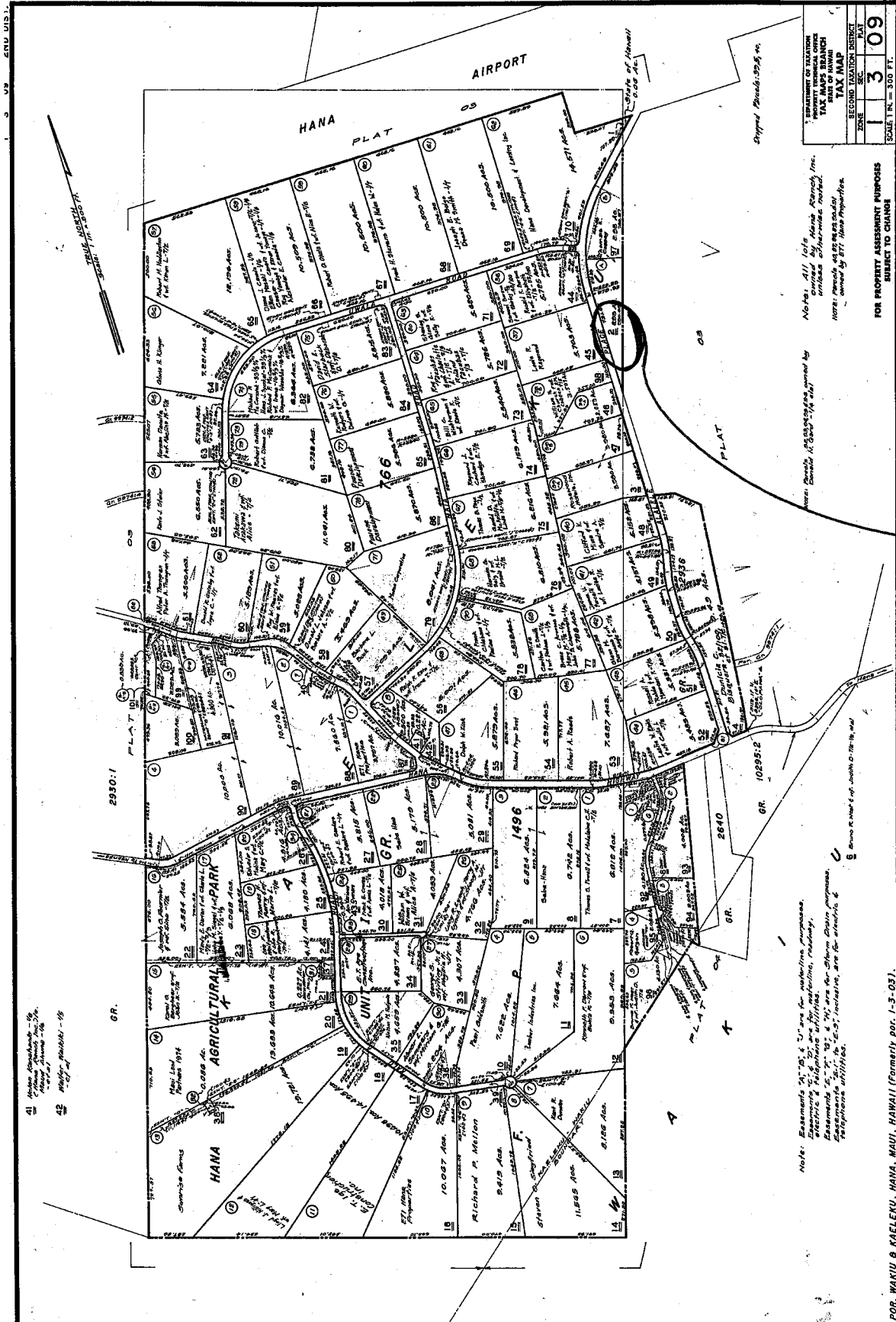
Town  
HAINA

SECOND DIVISION	
ZONE	SEC.
1	3
CONTAINING PLATS	
Scale: 1 in = 1000 ft.	

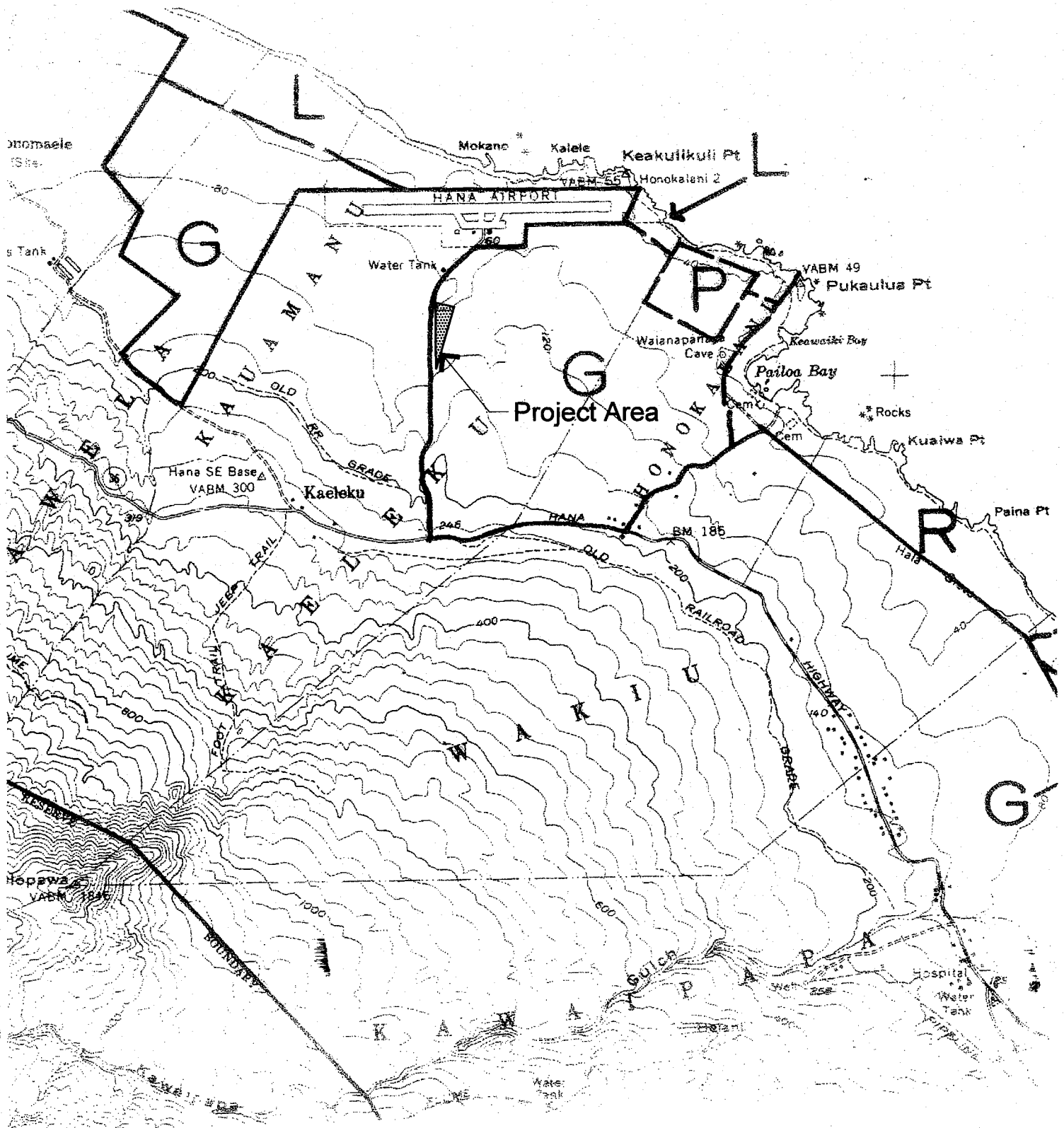
ADVANCE SHEET	CONTAINING	PLATS
SUBJECT TO CHANGE		
Scale: 1 in = 1000 ft.		

**WELTEN**

DWG. No. 1209.      9.9.9. Jan. 1932.      Source: Tam. Survey Dept.  
 By: \_\_\_\_\_  
 Appr. by: Appr. by  
 Revised by: \_\_\_\_\_  
 \_\_\_\_\_



Berlinea TMK: (2) 1-3-009:002



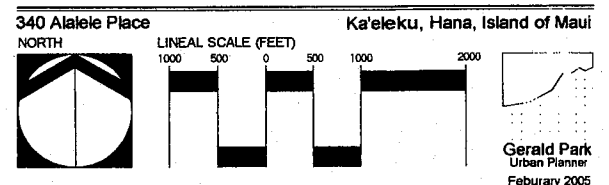
### Legend

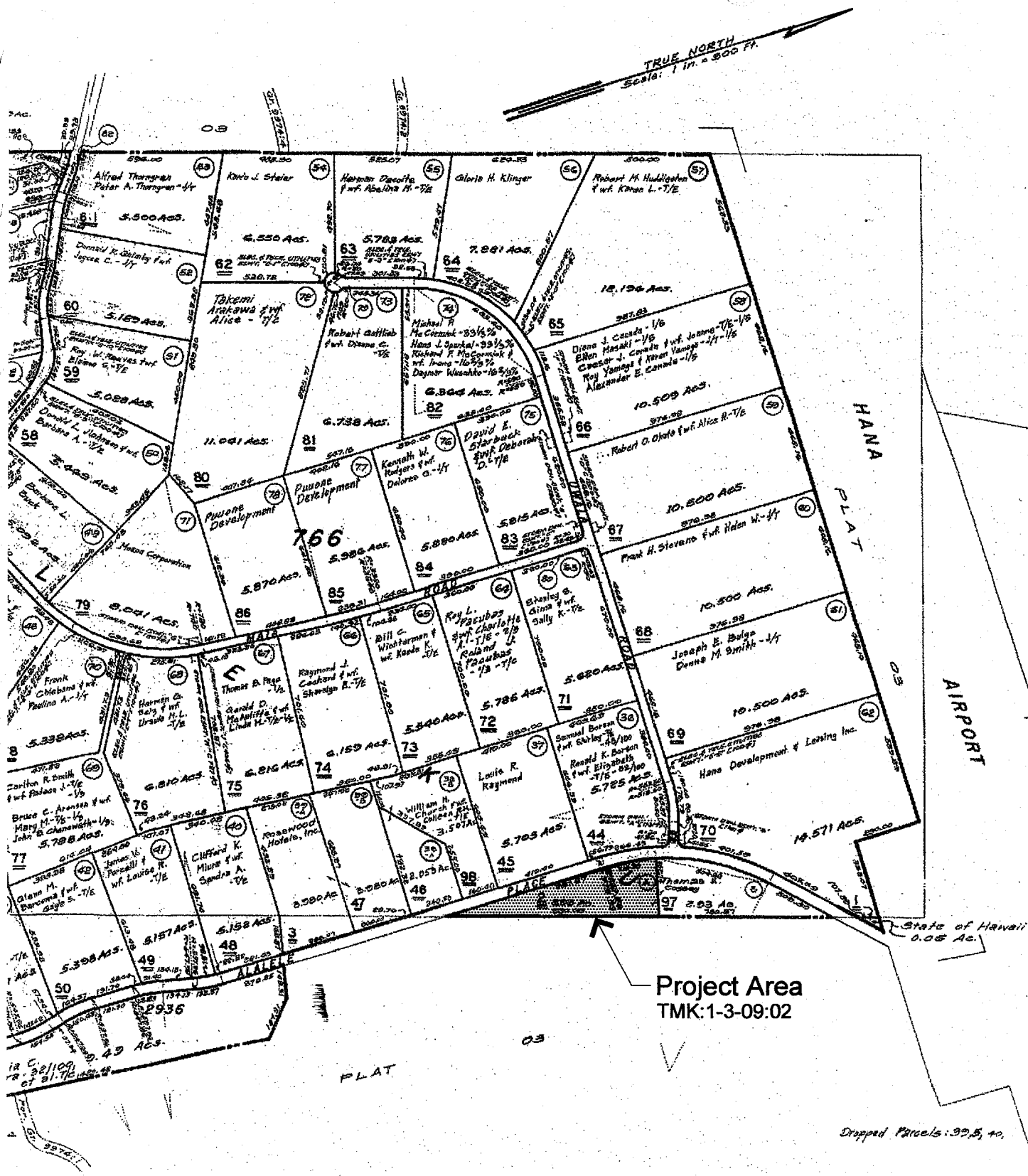
- P Protective Subzone
- L Limited Subzone
- R Resource Subzone
- G General Subzone

Source: Department of Land & Natural Resources,  
Hana Quadrangle, Island of Maui

**EXHIBIT 2**

**Figure 4**  
**Conservation District Subzones**  
**Berliner Residence**





DEPARTMENT OF TAXATION PROPERTY TECHNICAL OFFICE TAX MAPS BRANCH STATE OF HAWAII TAX MAP		
SECOND TAXATION DISTRICT		
ZONE	SEC.	PLAT
1	3	09
SCALE 1 IN. = 300 FT.		

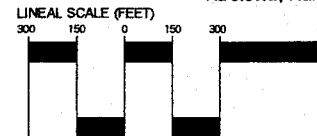
Source: Department of Taxation, Taxation Maps Bureau

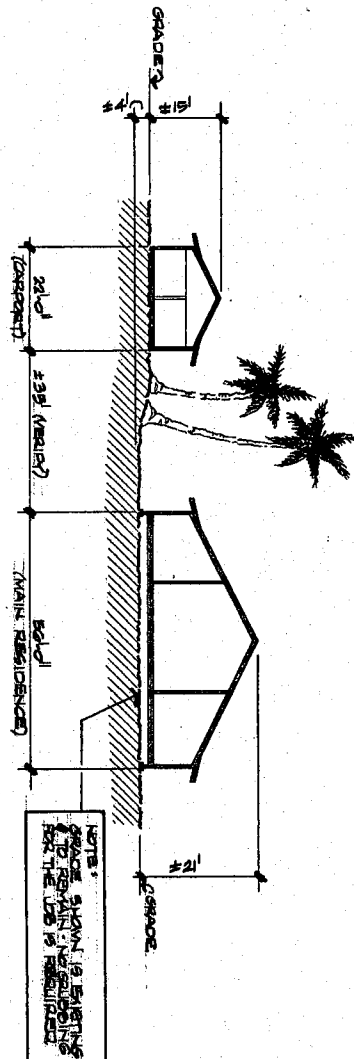
EXHIBIT 3

Figure 2  
Tax Map Key  
Berliner Residence

340 Aleale Place

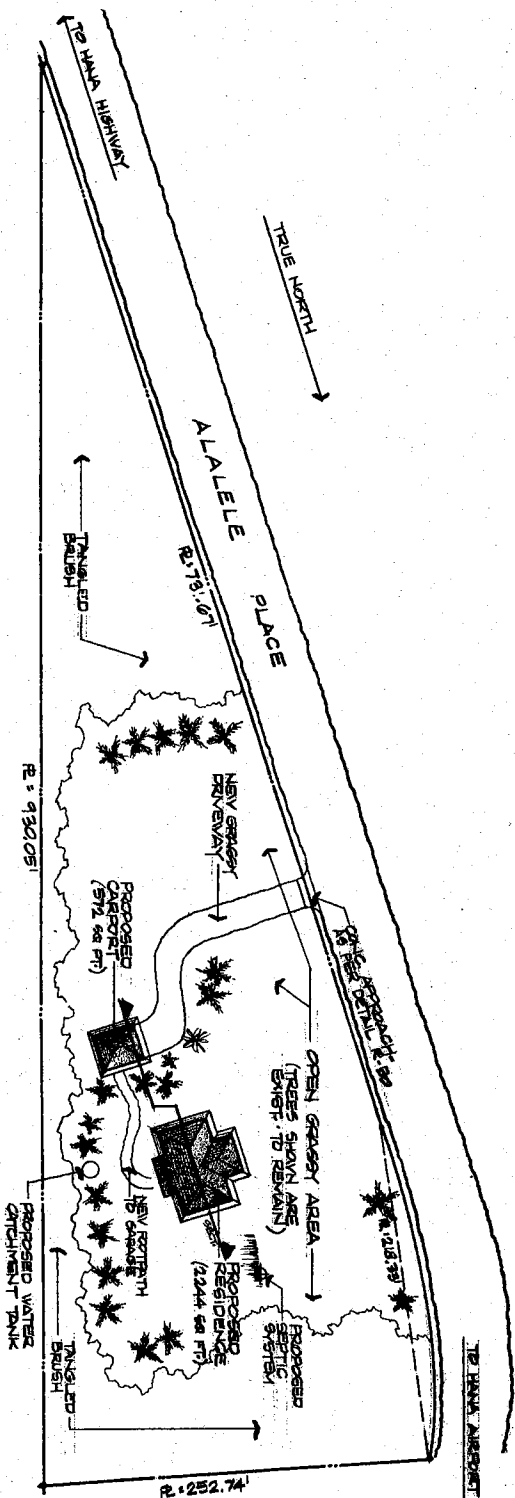
Ka'ealeku, Hana, Island of Maui





PARTIAL SCHEMATIC SECTION THRU SITE

GRAPHIC SCALE



PROPOSED SITE PLAN

GRAPHIC SCALE



PLANS PRODUCED BY:  
**DOUGLAS W. CORNELSON**  
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 PHONE: 808-248-7694  
 EMAIL: dougie-c@hawaii.rr.com

PROPOSED SITE LAYOUT FOR  
 THE BERLINER PROPERTY  
 HANA, MAUI, HAWAII

SHEET NO.

A-1

## 2 EXTERIOR ELEVATION

SCALE

(HAWAII SIDE)

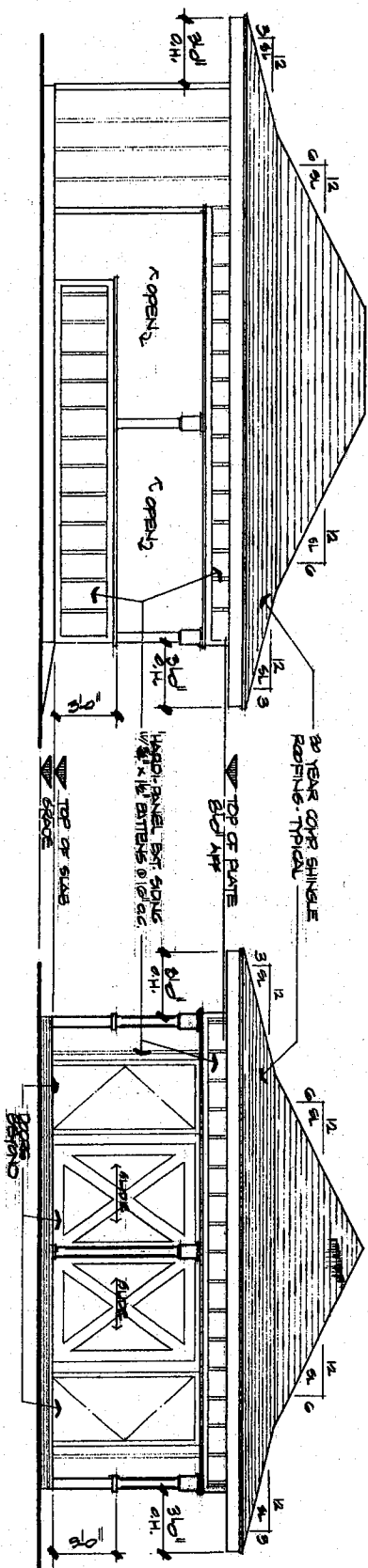
1/4" = 1' - 0"

## 1 EXTERIOR ELEVATION

SCALE

(MAUI SIDE)

1/4" = 1' - 0"



## 4 EXTERIOR ELEVATION

SCALE

(HAWAII SIDE)

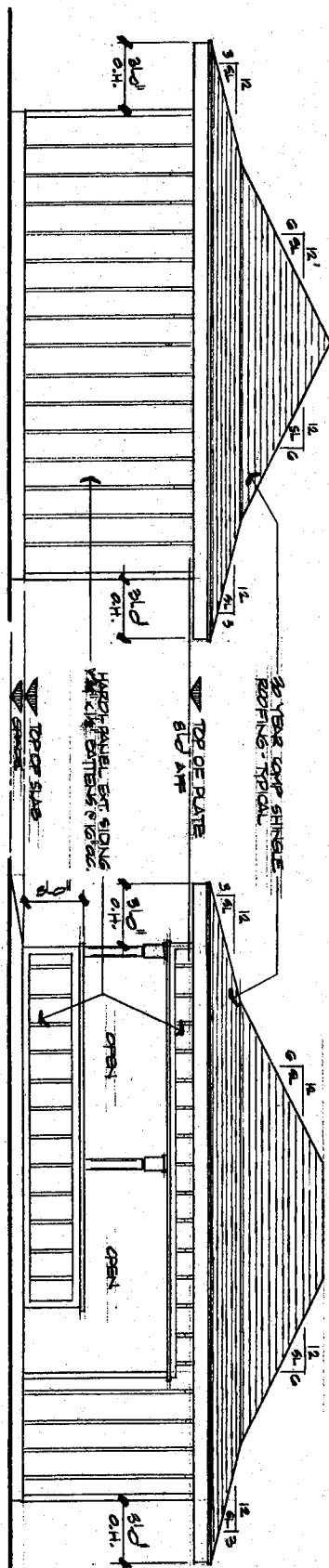
1/4" = 1' - 0"

## 3 EXTERIOR ELEVATION

SCALE

(MAUI SIDE)

1/4" = 1' - 0"

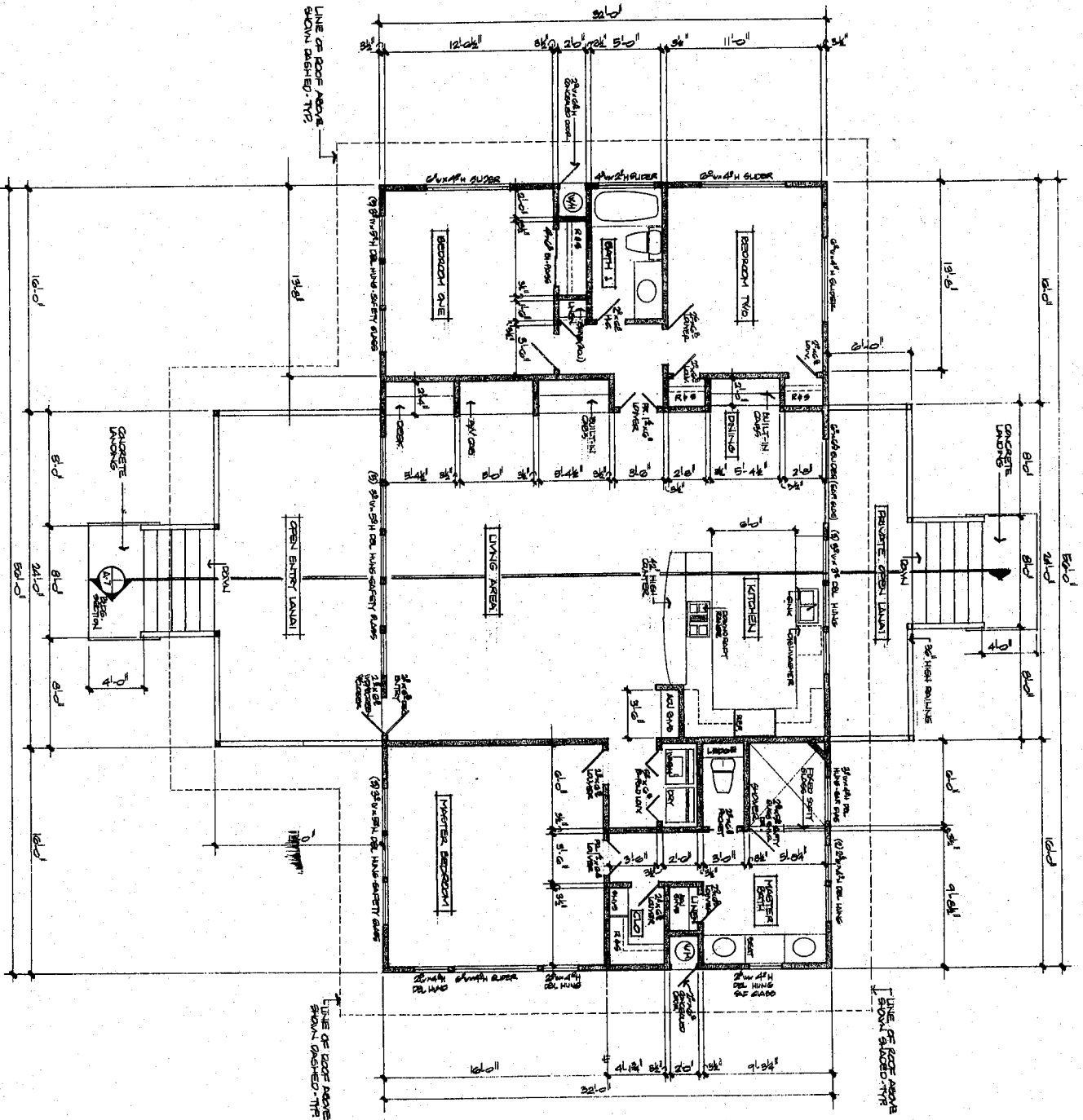


A PROPOSED CARPORT FOR  
THE BERLINER PROPERTY  
HANA, MAUI, HAWAII

PLANS PRODUCED BY:  
**DOUGLAS W. CORNELSON**  
P O BOX 736 - HANA, MAUI, HAWAII, 96713  
PHONE: 808.248.7694  
EMAIL: dougie-c@hawaii.rr.com

# EXHIBIT 4

## 1 FLOOR PLAN



1/2" = 1'-0"

A-2

A NEW HANA RESIDENCE FOR:

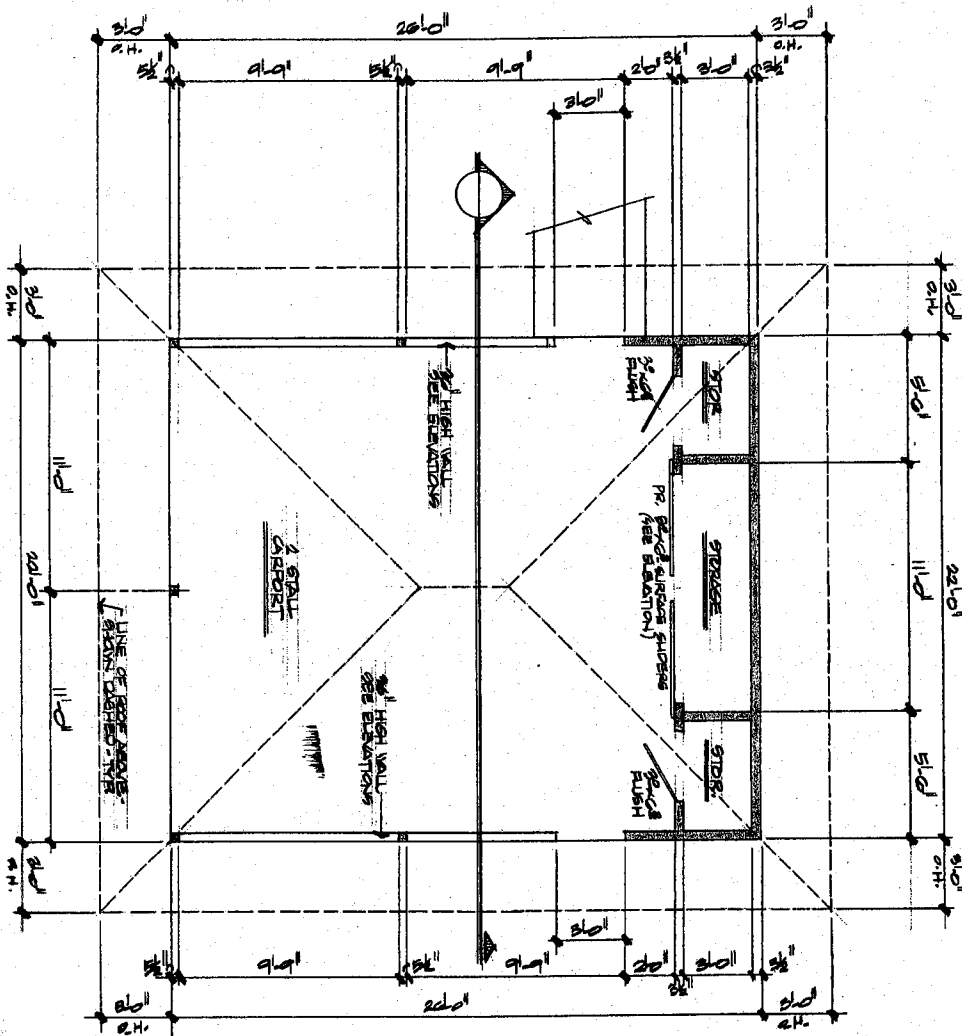
MICHAEL AND HEATHER BERLINER  
HANA, MAUI, HAWAII, 96713

CONTENTS  
- FLOOR PLAN

DATE ISSUED  
14 AUGUST 2004  
REVISIONS

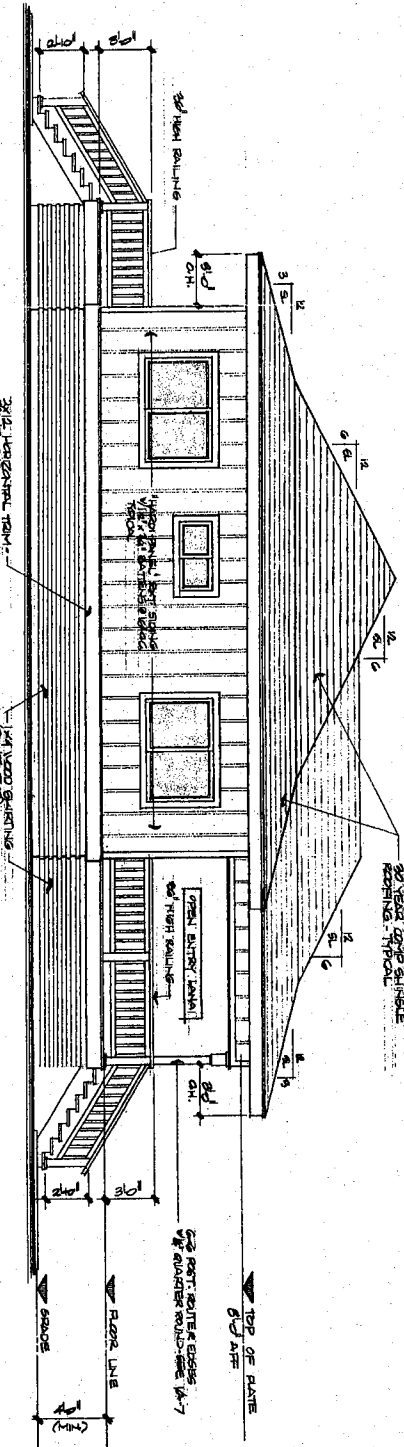


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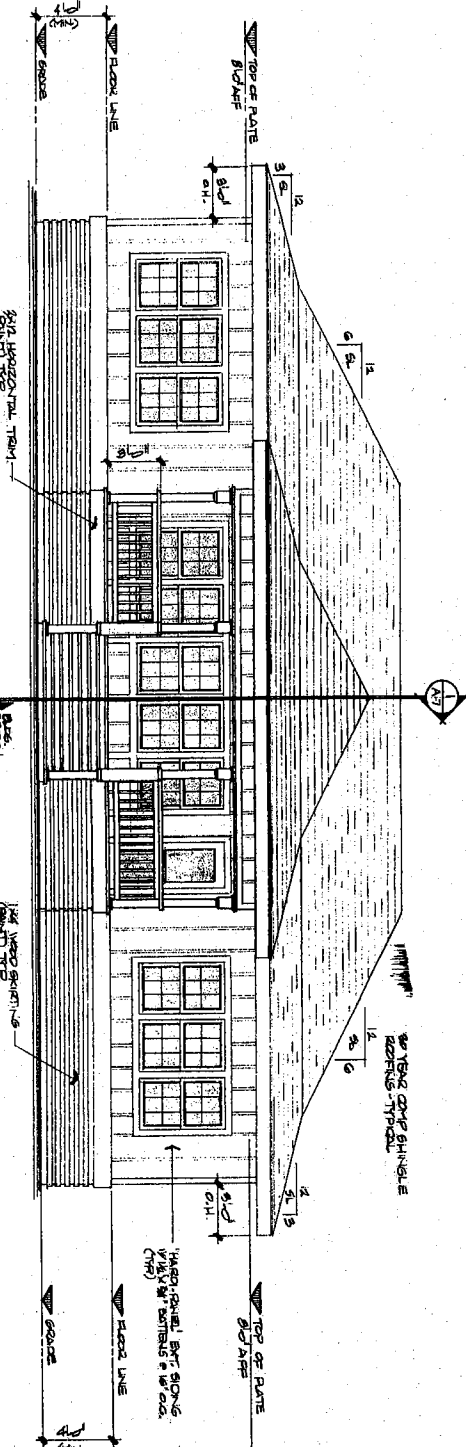




## (MARKA! SIDE)



MAHLE SION  
Wahlkreis



(MAUKA SIDE)

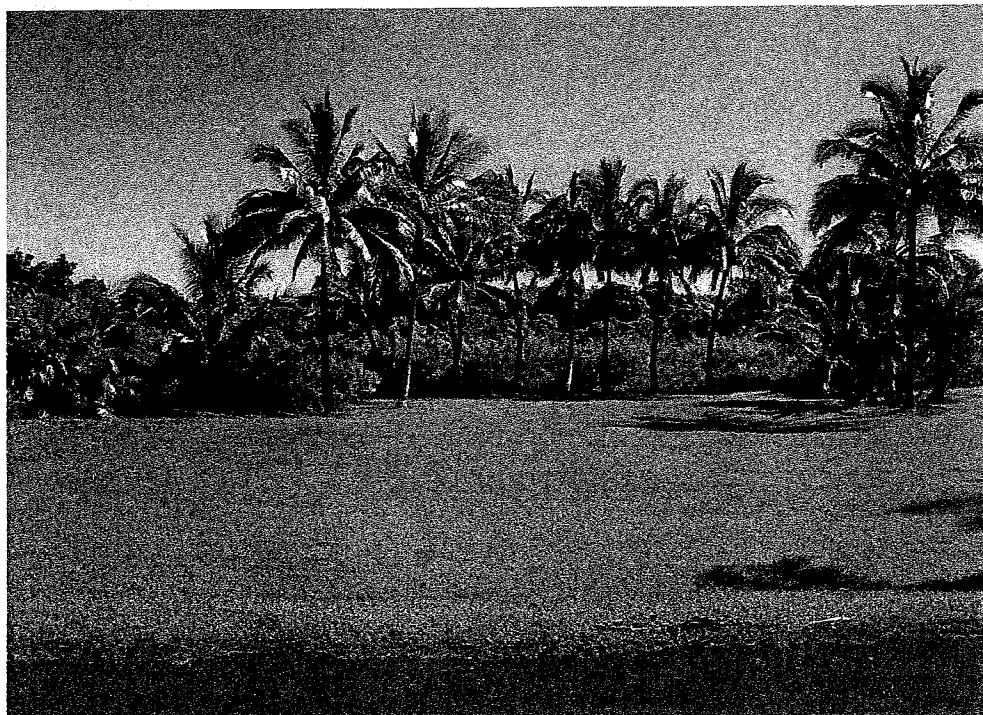


Image 1. Northern section of the landscaped area looking east from Alalele Place. The proposed house site adjoins the palm grove on the right.



Image 2. Northern section of the landscaped area looking west towards Alalele Place. The proposed house site is near the left foreground.



Image 3. Central section of the landscaped area looking east from Alalele Place. The proposed carport will be located on the flat area in the left background.



Image 4. Southern section of the landscaped area looking east from Alalele Place.